

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KIHARA KIARIE, individually and as trustee of the
KIHARA KIARIE REVOCABLE TRUST,

Plaintiff,

v.

DUMBSTRUCK, INC., PETER ALLEGRETTI,
MICHAEL TANSKI, and JEFF TETRAULT,

Defendants,

Case No. 19-CV-827
(ALC)(GWG)

DECLARATION OF CHRISTOPHER MASSARONI

I, **CHRISTOPHER MASSARONI, ESQ.**, declare under penalty of perjury that the foregoing is true and correct:

1. I am duly licensed and admitted to practice law in the State of New York, and I am a partner of the law firm of Hodgson Russ LLP, attorneys for defendants Dumbstruck, Inc., Peter Allegretti, Michael Tanski, and Jeff Tetrault (collectively “Defendants”). As such, I am familiar with the facts and circumstances recited herein.

2. I respectfully submit this declaration in opposition to the motion of plaintiff Kihara Kiarie, individually and as trustee of the Kihara Kiarie Revocable Trust (“Plaintiff”), to amend the complaint to join as defendants Michael Dura and David Gibson (the “Motion”).

3. This case has been pending since January 2019 and is in its late stages. Discovery is nearly concluded; the parties have answered dozens of interrogatories, they have exchanged thousands of documents; they have conducted depositions of all parties and one of the individuals who Plaintiff seeks to add as a defendant (Michael Dura); and Plaintiff has already produced his expert

report. There are only a few final items of discovery remaining to be conducted. Defendants plan to make a motion for summary judgment in the near future, and have already begun preparation of the motion.

4. Annexed hereto as **Exhibit “A”**, please find a copy of Plaintiff’s Complaint.
5. Annexed hereto as **Exhibit “B”**, please find a copy of Defendants’ Answer and Counterclaim.
6. Annexed hereto as **Exhibit “C”**, please find a copy of Plaintiff’s Second Supplemental Objections and Responses to Defendants’ Second Set of Interrogatories.
7. Annexed hereto as **Exhibit “D”**, please find a copy of the Scheduling Order entered April 30, 2019. The Scheduling Order sets a deadline of May 31, 2019 for joining parties or filing amended pleadings. This deadline was never extended and neither party has ever sought its extension.
8. Annexed hereto as **Exhibit “E”**, please find the relevant excerpts from the transcript of Plaintiff’s deposition, including the cover page, index, and the following pages: 59-60 and 197-198.
9. Annexed hereto as **Exhibit “F”**, please find the January/February Investor Update produced by Plaintiff.
10. Annexed hereto as **Exhibit “G”**, please find the May 30, 2017 email from Plaintiff to Defendants Allegretti and Tanski, and Messrs. Dura and Gibson.
11. Annexed hereto as **Exhibit “H”**, please find the Action by Unanimous Written Consent of the Board of Directors of Dumbstruck.
12. Annexed hereto as **Exhibit “I”**, please find the email chain between Plaintiff and Defendant Allegretti from June 2015.

13. Annexed hereto as **Exhibit “J”**, please find Plaintiff’s Verified Petition filed in New York State Supreme Court, Schenectady County, bearing Index No. 2019-0467.

CONCLUSION

14. For the reasons articulated in Defendants’ accompanying Memorandum of Law and in the Declaration of Peter Allegretti, Defendants respectfully request that the Court deny Plaintiff’s Motion.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2020


CHRISTOPHER MASSARONI, ESQ.